

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-447

August 8, 2001

CENTRAL MAINE POWER COMPANY, ET AL.
Request For Waiver From the Reorganization
Approval Requirements in 35-A M.R.S.A Section 708

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we grant an exemption from the approval requirements of 35-A M.R.S.A. § 708 for Energy East Corporation's (Energy East) proposed merger arrangement with RGS Energy Group, Inc.

II. BACKGROUND

On June 28, 2001, Central Maine Power Company (CMP) and its affiliates, Maine Natural Gas Company (MaineGas), MaineCom Services (MaineCom), Maine Electric Power Company, Inc. (MEPCO), NORVARCO, and Chester SVC Partnership (Chester) (together referred to as the Applicants) requested that the Commission grant an exemption from the reorganization approval requirements of 35-A M.R.S.A. § 708 for "reorganizations" that do not have an impact on the Applicants. The Applicants are Maine utilities and "affiliated interests" (as defined in 35-A M.R.S.A. § 707) of Energy East and its subsidiaries. CMP is a wholly owned subsidiary of CMP Group, Inc. which in turn is a wholly owned subsidiary of Energy East Corporation (Energy East), a New York public holding company which owns subsidiaries in Maine, New York, Connecticut and Massachusetts. CMP owns a majority interest in MEPCO. NOVARCO is a wholly owned subsidiary of CMP. MaineCom is a wholly owned subsidiary of CMP Group. Maine Gas is a wholly owned subsidiary of Energy East Enterprises, Inc., a wholly owned subsidiary of Energy East.

Energy East has entered into an agreement with RGS Energy Group, Inc. (RGS Energy) pursuant to which RGS Energy will ultimately become a wholly owned subsidiary of Energy East and an affiliated interest of the Applicants. RGS Energy is the corporate parent of Rochester Gas and Electric Corporation, a New York public utility engaged principally in the business of generating, purchasing and distributing electricity and purchasing and distributing natural gas in and around Rochester, New York. According to the Applicants, this transaction has been structured to avoid any impact on any Maine regulated entities.

Under section 708, the Applicants need Commission approval if Energy East or any of its affiliates acquires a 10% or more interest in any other company or if they transfer, increase or decrease their ownership interest in any company in which they

have a 10% or more ownership interest. According to the Applicants, this could result in unnecessary delays and uncertainties when the type of interests intended to be protected under Section 708 are not implicated. The Applicants seek to be exempted from section 708 with four major exceptions that relate to the “restructuring” of the Applicants or Energy East. This exemption is similar to those granted to several Maine telephone utilities. See e.g., *Community Service Telephone Co., Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Docket No. 98-973 (May 11, 1999 (CST Order)).

On July 5, 2001, the Commission sought comments from interested persons on the Applicants’ request. On July 18, the Industrial Energy Consumers Group (IECG) filed a petition to intervene and comments. On July 19, the Public Advocate (OPA) filed comments.

III. DISCUSSION AND DECISION

Under Section 708(2), all reorganizations are subject to Commission approval unless exempted by rule or order. Reorganization is defined very broadly as:

any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply.

35-A M.R.S.A. § 708(1)(A). An “affiliated interest” is defined as:

- (1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility;
- (2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);
- (3) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;
- (4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided that the person or group of persons beneficially owns more than 3% of the public utility’s voting securities; or
- (5) Any public utility of which any person defined in subparagraph (1) to (4) is an affiliated interest.

35-A M.R.S.A. § 707(1)(A).

The Applicants request a general exemption from the approval requirements of Section 708 for any “reorganization” except for:

- 1) a restructuring of any Applicant itself;
- 2) a restructuring of a subsidiary of an Applicant, 10% or more of whose voting securities are owned directly or indirectly by any Applicant;
- 3) a restructuring resulting in the creation of an affiliated interest of any Applicant where it is intended that the affiliate will either enter into a contract or arrangement to furnish goods used by any applicant or perform activities formerly or simultaneously performed by any Applicant; or
- 4) a restructuring of Energy East.

The Applicants propose that we use the term “restructuring” in this Order, as we have in prior orders, to describe a range of activities that is narrower than those included in the statutory term “reorganization”: “Restructuring” means the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination, in whole or in part, of the public utility (i.e. Applicant) itself or a corporation or entity described in subparagraphs (2), or (3) above, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of more than ten percent (10%) of the utility’s, corporation’s or entity’s voting securities. With respect to Energy East in subparagraph (4), the Applicants’ propose that restructuring means the consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination, direct or indirect, in whole or in part of Energy East accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of a majority of Energy East’s voting securities.

In its comments, the IECG objects to the Commission granting the requested exemption without further examination. It requests that the Commission require CMP to present evidence to the Commission on the exemption sought and how the exemption if granted “avoids any impact on any Maine regulated entities and... obviates the need for Maine regulatory approvals.” The OPA does not oppose granting the exemption as requested with one addition. The OPA asks for assurance that in granting the exemption, it will not foreclose discovery on any aspect of RGS’s operations, such as a share of common costs in the holding company structure, in the absence of provisions authorizing such discovery.

We recognize that an exemption for certain types of activities undertaken by Energy East and affiliates of the Applicants may be appropriate. We are unwilling, however, to grant the broad exemption requested by the Applicants without further examination of its possible consequences. Energy East’s holding company organization is complex and “multi-layered.” We are unsure if the exceptions as proposed capture all the activities over which our regulatory oversight should continue.

For example, in reviewing Applicant's request we noted that it would also be necessary to include in the exceptions the parent companies of the Applicants (e.g. CMP Group, Inc. and Energy East Enterprises (parent of Maine Natural Gas, Inc.)) to ensure our regulatory reach over transactions that affect Maine's ratepayers.

Rather than grant the Applicants' request, we will grant an exemption for the pending RGS merger transactions and direct our staff to continue working with the Applicants to craft a more narrow general exemption from Section 708, if they desire such an exemption. The RGS merger will have no direct impact on CMP or any other Maine utility. RGS's energy business is conducted through the Rochester Gas and Electric Company and serves retail customers in New York State. The proposed merger will not affect the rates of CMP or Maine Natural Gas (both are currently operating under rate plans) nor will the proposed merger have any impact on our ability to regulate any Maine utility. The OPA's concern about access to RGS information is addressed in our order approving the Energy East/CMP Group merger. *CMP Group, Inc., Request for Approval of Reorganization and Affiliated Interest Transaction*, Docket No. 99-441 (Jan. 4, 2000). As provided in that Order, we will continue to have access to the books and records of Energy East and its affiliates whose activities relate to, or in any way impact, the operation, cost or revenues of CMP in Maine. *Id.* at 25. Given these circumstances, exempting this reorganization from 35-A M.R.S.A. § 708(2)(A) is appropriate.

Accordingly, we

ORDER

1. Energy East and its affiliates (as defined in 35-A M.R.S.A. § 707) shall be exempt from the requirements of 35-A M.R.S.A. § 708 as the statute applies to the proposed merger of Energy East and RGS Energy Group, Inc., as more fully described in its application to the Federal Energy Regulatory Commission (FERC) Docket No. EC01-97.

2. The exemption created by Ordering Paragraph 1 applies only to the requirement of 35-A M.R.S.A. § 708(2) that the Commission approve the reorganization. The exemption does not apply to the approval requirements of 35-A M.R.S.A. § 707(3) that requires a public utility to obtain Commission approval to extend or receive credit or to make or receive a loan to or from an affiliated interest or to make any contract or arrangement for the furnishing of management, supervision or construction, engineering, accounting, legal, financial or similar services, or to furnish any service or real or personal property other than those enumerated in 35-A M.R.S.A. § 707(3) with any affiliated interest; or to any other provision of Title 35-A.

Dated at Augusta, Maine, this 8th day of August, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.